



2009 ASSEMBLY BILL 164

1 **AN ACT** *to amend* 48.64 (title), 48.64 (1), 48.64 (1m), 48.64 (1r), 48.64 (2), 48.64
2 (4) (a) and 48.64 (4) (c); and *to repeal and recreate* 48.64 (title), 48.64 (1),
3 48.64 (1m), 48.64 (1r), 48.64 (2), 48.64 (4) (a) and 48.64 (4) (c) of the statutes;
4 **relating to:** notice of intent to remove a child from the home of a relative and
5 review of decisions or orders involving the placement and care of a child placed
6 in the home of a relative.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 48.64 (title) of the statutes is amended to read:
8 **48.64 (title) Placement of children in foster homes, treatment foster**
9 **homes and group homes out-of-home care.**
10 **SECTION 1m.** 48.64 (title) of the statutes, as affected by 2009 Wisconsin Acts
11 28 and (this act), is repealed and recreated to read:

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48.64 (title) Placement of children in out-of-home care.

SECTION 2. 48.64 (1) of the statutes is amended to read:

48.64 **(1)** DEFINITION. In this section, “agency” means the department, the department of corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes or in the homes of relatives other than a parent.

SECTION 2m. 48.64 (1) of the statutes, as affected by 2009 Wisconsin Acts 28 and (this act), is repealed and recreated to read:

48.64 **(1)** DEFINITION. In this section, “agency” means the department, the department of corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes or group homes or in the homes of relatives other than a parent.

SECTION 3. 48.64 (1m) of the statutes is amended to read:

48.64 **(1m)** ~~FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME~~
OUT-OF-HOME CARE AGREEMENTS. If an agency places a child in a foster home, treatment foster home, or group home or in the home of a relative other than a parent under a court order or places a child in a foster home, treatment foster home, or group home under a voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home, treatment foster home, or group home or in the home of a relative other than a parent for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The

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1 child may not be removed before completion of the hearing under sub. (4) (a) or (c),
2 if requested, or 30 days after the receipt of the notice, whichever is later, unless the
3 safety of the child requires it or, in a case in which the reason for removal is to place
4 the child for adoption under s. 48.833, unless all of the persons who have the right
5 to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the
6 proposed removal. If the safety of the child requires earlier removal, s. 48.19 shall
7 apply applies. If an agency removes a child from an adoptive placement, the head
8 of the home shall have no claim against the placing agency for the expense of care,
9 clothing, or medical treatment.

10 **SECTION 3m.** 48.64 (1m) of the statutes, as affected by 2009 Wisconsin Acts 28
11 and (this act), is repealed and recreated to read:

12 **48.64 (1m) OUT-OF-HOME CARE AGREEMENTS.** If an agency places a child in a
13 foster home or group home or in the home of a relative other than a parent under a
14 court order or places a child in a foster home or group home under a voluntary
15 agreement under s. 48.63, the agency shall enter into a written agreement with the
16 head of the home. The agreement shall provide that the agency shall have access at
17 all times to the child and the home, and that the child will be released to the agency
18 whenever, in the opinion of the agency placing the child or the department, the best
19 interests of the child require release to the agency. If a child has been in a foster home
20 or group home or in the home of a relative other than a parent for 6 months or more,
21 the agency shall give the head of the home written notice of intent to remove the
22 child, stating the reasons for the removal. The child may not be removed before
23 completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days after the
24 receipt of the notice, whichever is later, unless the safety of the child requires it or,
25 in a case in which the reason for removal is to place the child for adoption under s.

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1 48.833, unless all of the persons who have the right to request a hearing under sub.
2 (4) (a) or (c) sign written waivers of objection to the proposed removal. If the safety
3 of the child requires earlier removal, s. 48.19 applies. If an agency removes a child
4 from an adoptive placement, the head of the home shall have no claim against the
5 placing agency for the expense of care, clothing, or medical treatment.

6 **SECTION 4.** 48.64 (1r) of the statutes is amended to read:

7 48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a
8 school-age child in a foster home, ~~a treatment foster home or a~~, or group home or
9 in the home of a relative other than a parent, the agency shall notify the clerk of the
10 school district in which the foster home, treatment foster home ~~or~~, group home, or
11 home of the relative is located that a school-age child has been placed in a foster
12 home, treatment foster home ~~or~~, group home, or home of a relative in the school
13 district.

14 **SECTION 4m.** 48.64 (1r) of the statutes, as affected by 2009 Wisconsin Acts 28
15 and (this act), is repealed and recreated to read:

16 48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a
17 school-age child in a foster home or group home or in the home of a relative other
18 than a parent, the agency shall notify the clerk of the school district in which the
19 foster home, group home, or home of the relative is located that a school-age child
20 has been placed in a foster home, group home, or home of a relative in the school
21 district.

22 **SECTION 5.** 48.64 (2) of the statutes is amended to read:

23 48.64 (2) SUPERVISION OF FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME
24 OUT-OF-HOME CARE PLACEMENTS. Every child who is placed in a foster home, treatment
25 foster home, or group home shall be under the supervision of an agency. Every child

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1 who is placed in the home of a relative other than a parent under a court order shall
2 be under the supervision of an agency.

3 **SECTION 5m.** 48.64 (2) of the statutes, as affected by 2009 Wisconsin Acts 28
4 and (this act), is repealed and recreated to read:

5 **48.64 (2)** SUPERVISION OF OUT-OF-HOME CARE PLACEMENTS. Every child who is
6 placed in a foster home or group home shall be under the supervision of an agency.
7 Every child who is placed in the home of a relative other than a parent under a court
8 order shall be under the supervision of an agency.

9 **SECTION 6.** 48.64 (4) (a) of the statutes is amended to read:

10 **48.64 (4)** (a) Any decision or order issued by an agency that affects the head of
11 a foster home, treatment foster home, or group home, the head of the home of a
12 relative other than a parent in which a child is placed, or the children child involved
13 may be appealed to the department under fair hearing procedures established under
14 ~~department rules.~~ The department shall, upon rules promulgated by the
15 department. Upon receipt of an appeal, the department shall give the head of the
16 home reasonable notice and an opportunity for a fair hearing. The department may
17 make such additional investigation as the department considers necessary. The
18 department shall give notice of the hearing to the head of the home and to the
19 departmental subunit, county department, or child welfare agency that issued the
20 decision or order. Each person receiving notice is entitled to be represented at the
21 hearing. At all hearings conducted under this subsection paragraph, the head of the
22 home, or a representative of the head of the home, shall have an adequate
23 opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records
24 to be used at the hearing at a reasonable time before the date of the hearing as well
25 as during the hearing, to bring witnesses, to establish all pertinent facts and

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1 circumstances, and to question or refute any testimony or evidence, including an
2 opportunity to confront and cross-examine adverse witnesses. The department
3 shall grant a continuance for a reasonable period of time when an issue is raised for
4 the first time during a hearing. This requirement may be waived with the consent
5 of the parties. The decision of the department shall be based exclusively on evidence
6 introduced at the hearing. A transcript of testimony and exhibits, or an official report
7 containing the substance of what transpired at the hearing, together with all papers
8 and requests filed in the proceeding, and the findings of the hearing examiner shall
9 constitute the exclusive record for decision by the department. The department shall
10 make the record available at any reasonable time and at an accessible place to the
11 head of the home or his or her representative. Decisions by the department shall
12 specify the reasons for the decision and identify the supporting evidence. No person
13 participating in an agency action being appealed may participate in the final
14 administrative decision on that action. The department shall render its decision as
15 soon as possible after the hearing and shall send a certified copy of its decision to the
16 head of the home and to the departmental subunit, county department, or child
17 welfare agency that issued the decision or order. The decision shall be binding on all
18 parties concerned.

19 **SECTION 6m.** 48.64 (4) (a) of the statutes, as affected by 2009 Wisconsin Acts
20 28 and (this act), is repealed and recreated to read:

21 48.64 (4) (a) Any decision or order issued by an agency that affects the head of
22 a foster home or group home, the head of the home of a relative other than a parent
23 in which a child is placed, or the child involved may be appealed to the department
24 under fair hearing procedures established under rules promulgated by the
25 department. Upon receipt of an appeal, the department shall give the head of the

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1 home reasonable notice and an opportunity for a fair hearing. The department may
2 make any additional investigation that the department considers necessary. The
3 department shall give notice of the hearing to the head of the home and to the
4 departmental subunit, county department, or child welfare agency that issued the
5 decision or order. Each person receiving notice is entitled to be represented at the
6 hearing. At all hearings conducted under this paragraph, the head of the home, or
7 a representative of the head of the home, shall have an adequate opportunity,
8 notwithstanding s. 48.78 (2) (a), to examine all documents and records to be used at
9 the hearing at a reasonable time before the date of the hearing as well as during the
10 hearing, to bring witnesses, to establish all pertinent facts and circumstances, and
11 to question or refute any testimony or evidence, including an opportunity to confront
12 and cross-examine adverse witnesses. The department shall grant a continuance
13 for a reasonable period of time when an issue is raised for the first time during a
14 hearing. This requirement may be waived with the consent of the parties. The
15 decision of the department shall be based exclusively on evidence introduced at the
16 hearing. A transcript of testimony and exhibits, or an official report containing the
17 substance of what transpired at the hearing, together with all papers and requests
18 filed in the proceeding, and the findings of the hearing examiner shall constitute the
19 exclusive record for decision by the department. The department shall make the
20 record available at any reasonable time and at an accessible place to the head of the
21 home or his or her representative. Decisions by the department shall specify the
22 reasons for the decision and identify the supporting evidence. No person
23 participating in an agency action being appealed may participate in the final
24 administrative decision on that action. The department shall render its decision as
25 soon as possible after the hearing and shall send a certified copy of its decision to the

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1 head of the home and to the departmental subunit, county department, or child
2 welfare agency that issued the decision or order. The decision shall be binding on all
3 parties concerned.

4 **SECTION 7.** 48.64 (4) (c) of the statutes is amended to read:

5 48.64 **(4)** (c) The circuit court for the county where the dispositional order
6 placing a child in a foster home, treatment foster home, or group home or in the home
7 of a relative other than a parent was entered or the voluntary agreement under s.
8 48.63 so placing a child in a foster home, treatment foster home, or group home was
9 made has jurisdiction upon petition of any interested party over ~~a~~ the child who is
10 placed in ~~a~~ the foster home, treatment foster home, ~~or~~ group home, or home of the
11 relative. The circuit court may call a hearing, at which the head of the home and the
12 supervising agency under sub. (2) shall be present, for the purpose of reviewing any
13 decision or order of that agency involving the placement and care of the child. If the
14 child has been placed in a foster home or in the home of a relative other than a parent,
15 the foster parent or relative may present relevant evidence at the hearing. The
16 petitioner has the burden of proving by clear and convincing evidence that the
17 decision or order issued by the agency is not in the best interests of the child.

18 **SECTION 7m.** 48.64 (4) (c) of the statutes, as affected by 2009 Wisconsin Acts
19 28 and (this act), is repealed and recreated to read:

20 48.64 **(4)** (c) The circuit court for the county where the dispositional order
21 placing a child in a foster home or group home or in the home of a relative other than
22 a parent was entered or the voluntary agreement under s. 48.63 placing a child in
23 a foster home or group home was made has jurisdiction upon petition of any
24 interested party over the child who is placed in the foster home, group home, or home
25 of the relative. The circuit court may call a hearing, at which the head of the home

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1 and the supervising agency under sub. (2) shall be present, for the purpose of
2 reviewing any decision or order of that agency involving the placement and care of
3 the child. If the child has been placed in a foster home or in the home of a relative
4 other than a parent, the foster parent or relative may present relevant evidence at
5 the hearing. The petitioner has the burden of proving by clear and convincing
6 evidence that the decision or order issued by the agency is not in the best interests
7 of the child.

8 **SECTION 8. Initial applicability.**

9 (1) AGENCY DECISIONS INVOLVING PLACEMENT OF CHILD. This act first applies to
10 decisions or orders involving the placement and care of a child that are made on the
11 effective date of this subsection.

12 **SECTION 9m. Effective dates.** This act takes effect on the day after
13 publication, except as follows:

14 (1) TREATMENT FOSTER HOMES. The repeal and recreation of sections 48.64 (title),
15 (1), (1m), (1r), (2), and (4) (a) and (c) of the statutes takes effect on the date stated in
16 the notice provided by the secretary of children and families and published in the
17 Wisconsin Administrative Register under section 48.62 (9) of the statutes, as created
18 by 2009 Wisconsin Act 28.

19 (END)